

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON FEDERAL RELATIONS, ENERGY, AND TELECOMMUNICATIONS

Call to Order: By **CHAIRMAN AUBYN A. CURTISS**, on January 30, 2001
at 3:20 P.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Rep. Aubyn A. Curtiss, Chairman (R)
Rep. Tom Dell, Vice Chairman (D)
Rep. Dee Brown (R)
Rep. Roy Brown (R)
Rep. Gary Forrester (D)
Rep. Carol C. Juneau (D)
Rep. Gary Matthews (D)
Rep. Joe McKenney (R)
Rep. Alan Olson (R)
Rep. Trudi Schmidt (D)
Rep. Bob Story (R)

Members Excused: Rep. Douglas Mood, Vice Chairman (R)

Members Absent: None.

Staff Present: Stacey Leitgeb, Committee Secretary
Stephen Maly, Legislative Branch

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 338, 1/26/2001; HB 374,
1/26/2001
Executive Action: HB 242; HB 271; HJ 5

HEARING ON HB 338

Sponsor: REPRESENTATIVE JOEY JAYNE, HD 73

Proponents: Robert Dusty Deschamp, Confederated Salish and
Kootenai Tribes
John Connor, Attorney General's Office

Opponents: None

Opening Statement by Sponsor:

REPRESENTATIVE JOEY JAYNE, HD 73, said that this bill relates exclusively to the administration of criminal justice at the state and local level and came about as a result of a case in the prosecution of a Billings police officer in the crime of false swearing, a misdemeanor. The officer in that case was also an officer in the Army Reserve and was accused of various sexual improprieties with various female soldiers under his command. The conduct was alleged to have occurred while the man was both on and off duty. He denied the acts, but was eventually discharged from the Reserves. Since his conduct was also reflected on his ability and fitness as a police officer, the matter was referred to the Chief of Police and to the city and county attorneys. He was then prosecuted for perjury, but the case was thrown out on the grounds that, under existing Montana law, it is not a crime to lie under oath under a variety of circumstances, including to federal employees such as Army investigators. This bill will correct this gap in Montana's criminal law. This all ties back to the definition of government and public servant.

Proponents' Testimony:

Robert Dusty Deschamp, Confederated Salish and Kootenai Tribes, helped write this bill. He also prosecuted the case that REP. JAYNE referred to. He is in support of this bill.

John Connor, Attorney General's Office, said that the County Attorneys Association supports this bill. It is good public policy.

Questions from Committee Members and Responses:

REPRESENTATIVE BOB STORY asked if this definition of government is only applied to this title. **Mr. Deschamp** said that is correct, it wouldn't be in anything other than title 45.

REP. STORY asked what kind of change in the relationship between law enforcement and tribal government results from this change in statute. **Mr. Deschamp** wouldn't anticipate any change. On the Flat Head Reservation they gave up federal jurisdiction and for many years were strictly state jurisdiction. Since then, the tribe has taken back some of the criminal jurisdiction and they now have exclusive misdemeanor jurisdiction over the members of the tribe. **REP. STORY** asked, if you have a tribal government who doesn't have an agreement for jurisdiction, if a non-member of the reservation goes on and is asked a question by a tribal officer, is that person going to be subject to a different law with this bill in place than he was before this law?

Mr. Deschamp said that he wouldn't be. The only place that there would be a problem would be if that person went into a tribal court and testified under oath. Right now there is no one that can prosecute that person.

REPRESENTATIVE TOM DELL said that this is filling a loop hole. Is that accurate? **Mr. Deschamp** said that was correct. **REP. DELL** clarified that what this says is that we need to allow for broader interpretation for other parties that may be involved.

Mr. Deschamp said that in the case referenced earlier, the police officer was also an Army officer. The Army investigated the officer's conduct and along the way took a statement, under oath, from the officer. He lied during that statement while he was under oath. The Army discharged him and sent the file to the Chief of Police for review. The County Attorney charged him with false swearing, a misdemeanor. The case was filed and ready to go to trial. The defendant filed a motion to have the case thrown out because the false swearing statute makes it an offense to lie under oath to a public servant with the purpose of misleading him. If you look at the definition of public servant under the Montana criminal code, it says that is somebody who works for the government. If you look at the definition for government, it says that government includes any bureau, agency, department of the state of Montana or any locality in it. It doesn't mention the federal government, so the Army investigator didn't fall under that definition, making it not a crime to lie to them. This also discounts tribal government as government, making it not a crime to lie in a tribal court.

REP. STORY said that this legislation basically allows an agent of the federal government or tribe to do an investigation on some violation of state law. **Mr. Deschamp** said that is correct.

Closing by Sponsor:

REP. JAYNE said that this bill will correct a gap in Montana's criminal law. As written now, the definition of government is quite narrow. This bill will fill this void. This is not a bill to change any jurisdiction that is already in effect. It protects law and order in our communities.

HEARING ON HB 374

Sponsor: REPRESENTATIVE BILL EGGERS, HD 6

Proponents: Jeff Hindoien, Governor's Office
REP. CAROL JUNEAU, HD 85

Opponents: None.

Opening Statement by Sponsor:

REPRESENTATIVE BILL EGGERS, HD 6, said that we need to update the language in 90-11-101, which is the legislative policy, which is the lead in to 90-1-102, which are the duties of the state coordinator of Indian affairs. The current language is inaccurate and demeaning. This is not a bill that involves any money. It is the bill that establishes the policy for the Governor's Office and the state coordinator. It is important to the Indian community and to a good working relationship with the Governor's Office.

Proponent Testimony:

Jeff Hindoien, Governor's Office, supports this bill.

REP. CAROL JUNEAU, HD 85, wants to go on record as supporting this bill. This language is from 1951, it is time to update it.

Questions from Committee Members and Responses:

REPRESENTATIVE ROY BROWN asked for the definition of a dependent domestic nation. **REP. EGGERS** said that it should be domestic dependent nations. There is a Marshall trilogy of cases that set forth the issue of who owns the land, how it is transferred, how you obtain title. In our Supreme Court decision, in one of the trilogy cases, he described Indian tribes as domestic dependent nations. **REP. BROWN** then asked if there was a definition section that would give the actual definition. **REP. EGGERS** said that there is not one in statute, but there is in the law. This is a well established reference to Indian tribes today.

REP. DEE BROWN referred to page 1, line 27, when it says, "The state office of the coordinator of Indian Affairs be established," rather than established it would say maintained. For how long has an office coordinator for Indian Affairs been a part of our government. **REP. EGGERS** said that 90-11-101 was enacted in 1950, so he would guess it was in 1950. **REP. BROWN** clarified that we have been doing this for 50 years and we need to clean up some language. **REP. EGGERS** said that is exactly correct.

Closing by Sponsor:

REP. EGGERS asked for a little more time to fine tune the bill before executive action on it.

EXECUTIVE ACTION ON HB 242

Motion: **REP. DELL** moved that **HB 242 DO PASS.**

Motion: **REP. ROY BROWN** moved that **AMENDMENT TO HB 242 BE ADOPTED.**

Discussion:

REP. BROWN explained the amendment.

REP. OLSON asked, if a group of radio operators get together and pinpoint where the disturbance is coming from, how will they gain entry to test where the disturbance is coming from. **REP. ROY BROWN** said that since they will have private right of action, if they can pinpoint where the disturbance is coming from, they will have this law and they can find an attorney to present a case. It could be a deterrent to stop people who are doing this. The main purpose of this entire bill was to give Hamm Radio operators some sort of tool to get somebody to stop interfering with them.

REP. FORRESTER would assume that this would mean that you would have to hire an attorney and that they have the right to recover attorney's fees. **REP. BROWN** said that was correct.

Vote: Motion **carried unanimously.**

Motion: **REP. BROWN** moved that **HB 242 DO PASS AS AMENDED.**

Discussion:

REP. DEE BROWN asked if we are giving private citizens police powers. **REP. ROY BROWN** doesn't think that we are. People have the right of private action for all kinds of different things. **REP. DEE BROWN** then asked if there are already laws out there that could be used to prosecute these. **REP. ROY BROWN** said that there are federal laws that are out there that could be used, however, whenever radio operators went to the FCC and asked for relief under those federal laws, they didn't feel that they ever got any results from that particular situation because the FCC didn't feel that it was a big enough crime to chase down these people to get it taken care of.

REP. MOOD would characterize this as a very difficult situation for a very small number of people. Unless some controlling authority decides to take this on as a project, the practical effect is that nobody is going to do anything about it. It would be very, very difficult to prove that someone is using an illegal transmitter. This is another bill that will most likely not be enforced.

Vote: Motion carried 11-1 with Story voting no.

EXECUTIVE ACTION ON HB 271

Motion: **REP. DELL** moved that **HB 271 DO PASS.**

Motion: **REP. OLSON** moved that **AMENDMENTS BE ADOPTED.**

Discussion:

REP. OLSON explained the amendment. **EXHIBIT(feh24a01)**

REP. JUNEAU said that the Attorney General's office said that the amendments were okay. The sponsor of the bill didn't like the amendments.

REP. DEE BROWN said that this is already in law, so by eliminating number 3, it really doesn't change the practice anyway.

REP. CURTISS asked what the bill would accomplish. **REP. STORY** said that it makes it clear that instead of having ten days to file the grievance you have 60 days.

REP. OLSON said that ten days isn't enough time. He felt striking 27 and 28 would be a little more encouragement to get it done on time.

REP. JUNEAU said that the tribal/state cooperative agreements sometimes take a while to get done. This bill will make things a little more flexible to get copies of the agreement to everyone that needs one. This is making sure that the ten day limit doesn't do away with an agreement that took a long time to get done.

REP. DEE BROWN said that line 27 is not a material part of this agreement.

Vote: Motion **carried unanimously.**

Motion: **REP. OLSON** moved that **HB 271 DO PASS AS AMENDED.**

Discussion:

REP. MOOD asked for clarification. **REP. STORY** said that chapter 18 applied to public contracts, 1-11 is validity of existing agreements. **Mr. Maly** said that the appeal is just to rid the code of a piece of legislation that no longer affects anything.

Vote: Motion **carried unanimously.**

EXECUTIVE ACTION ON HJ 5

Motion: **REP. OLSON** moved that **HJ 5 BE ADOPTED.**

Discussion:

REP. CURTISS had asked that some research be done on the issue of military spending. She feels that we shouldn't minimize the danger to our country because of what has happened with the deterioration of the Soviet Union. She learned that ten countries now possess biological weapons, including Iran, Iraq, Libya and North Korea. They have the capability of delivering them to the US. There are a total of 160 countries where we have a military presence. She read, "We project that during the next 15 years the United States most likely will face ICBM threats from Russia, China, North Korea, probably from Iran, and possibly from Iraq. The Russian threat, although significantly reduced, will continue to be the most robust and lethal, considerably more so than that posed by China and others of magnitude, more than that potentially posed by other nations whose missiles are likely to be fewer in number... By the year 2015, Russia will maintain as many nuclear weapons on ballistic missiles as its economy will allow." There has also been a lot of exchanging of weapons in these countries that are anti US.

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Substitute Motion: REP. CURTISS made a substitute motion that
HJ 5 DO NOT PASS.

Motion: REP. STORY moved that HJ 5 BE TABLED.

Discussion:

REP. DELL said that in 1939 we had a standing army the size of Poland. This is too simplistic to address where we are in terms of our responsibility as a nation. He could certainly not support this.

Vote: Motion carried 11-1 with Juneau voting no.

ADJOURNMENT

Adjournment: 4:20 P.M.

REP. AUBYN A. CURTISS, Chairman

ROBYN LUND, Secretary

AC/RL

EXHIBIT (feh24aad)